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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,705	02/05/2004	Thomas Roy Richard	3689	5619

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DOUGHERTY, CLEMENTS & HOFER  
1901 ROXBOROUGH ROAD  
SUITE300  
CHARLOTTE, NC 28211

EXAMINER

KATCHEVES, BASIL S

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/772,705

Applicant(s)

RICHARD ET AL.

Examiner

Basil Katcheves

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bracing strut (15) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,845,432 to Knudson.

Regarding claim 1, Knudson discloses a bracket for mounting a cover to a gutter, the bracket having a juncture (fig. 1: 43), a lifting strut (32) attached to the juncture, a stabilizing strut (39) attached to the juncture, and a bracing strut (65) attached to the juncture.

Regarding claim 2, Knudson discloses the bracing strut as being angled (fig. 3: see bend below 65).

Regarding claim 3, Knudson discloses the bracing strut as being straight (fig. 3: see straight vertical section below 65).

Regarding claim 4, Knudson discloses the bracing strut as being curved (fig. 3: see curve at 65).

Regarding claim 5, Knudson discloses the bracket as having a connecting element (fig. 1: 44) spanning between the stabilizing (39) and lifting (32) struts.

Regarding claim 6, Knudson discloses the bracing strut as having a curved brace (fig. 3: near 65) and an angled brace (fig. 3: see bend below 65).

Regarding claim 7, Knudson discloses the bracket as having a connecting element (fig. 1: 44) spanning between the stabilizing (39) and lifting (32) struts.

Regarding claim 8, Knudson discloses the distal end of the lifting strut as being curved (33).

Regarding claim 9, Knudson discloses the bracing strut as having a curved brace (fig. 3: near 65) and an angled brace (fig. 3: see bend below 65).

Regarding claim 10, Knudson discloses the bracket as having a connecting element (fig. 1: 44) spanning between the stabilizing (39) and lifting (32) struts.

Regarding claim 11, Knudson discloses the bracket as having a connecting element (fig. 1: 44) spanning between the stabilizing (39) and lifting (32) struts.

Regarding claim 12, Knudson discloses the bracket as having a connecting element (fig. 1: 44) spanning between the stabilizing (39) and lifting (32) struts.

Regarding claim 19, claim 19 is rejected for reasons cited in the rejection of claim 1. In addition, Knudson discloses positioning brackets along a trough at intervals (fig. 2: 31), interlocking the front of the stabilizing strut (fig. 3: 55) into the front of the gutter (fig. 3: 25), aligning a cover over the gutter and placing it under shingles (fig. 3: 14 & 20) and against the fascia of the roof (fig. 3: 13 & 18), and connecting the leading hooked gutter front edge (fig. 3: 22) with the distal end of the lifting strut (fig. 3: 33).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,845,432 to Knudson.

Regarding claim 13, Knudson discloses the bracket formed by extrusion (column 3, lines 6-8) but does not specifically disclose the use of cutting. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Knudson by using a type of cutter or trimmer to cut excessive flashing from the bracket or to create a custom fit for the bracket to match individual gutters. Regarding claim 13, applicant should note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

Regarding claim 14, Knudson discloses the bracket made from plastics or metals (column 3, lines 6-8).

Regarding claim 15, Knudson discloses the bracket as made from aluminum (column 3, lines 6-8).

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Regarding claim 18, Knudson discloses the bracket as capable of containing anti weathering agents (see rust resistant aluminum, column 3, line 7).

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,845,432 to Knudson in view of U.S. Patent No. 5,570,860 to Schoenherr.

Regarding claim 16, Knudson discloses the bracket as made from injection molded plastics but does not specifically disclose which type of plastic. Schoenherr discloses the use of polypropylene (column 2, line 60) plastic in a gutter bracket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Knudson by using polypropylene plastic, as disclosed by Schoenherr, in order to better protect the bracket from the effects of weather.

Regarding claim 17, Schoenherr discloses the use of fiberglass (column 2, line 61) in the plastic bracket.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to gutter brackets in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is

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(703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK

  
Basil Katcheves

12/14/04

Examiner, AU 3635